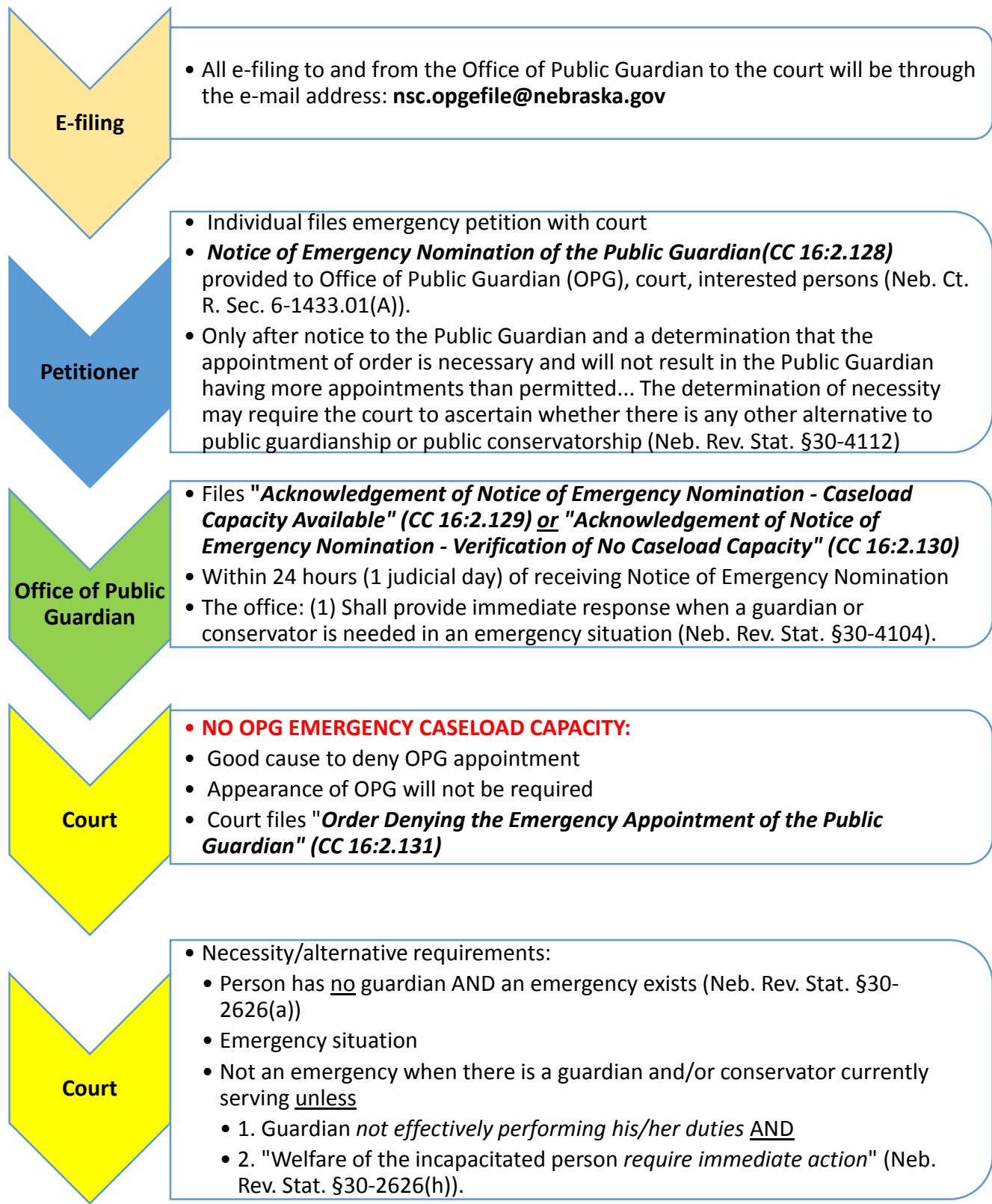


Nebraska Public Guardian Emergency Appointment Process



Nebraska Public Guardian Emergency Appointment Process

Court

- **OPG HAS EMERGENCY CASELOAD CAPACITY PENDING HEARING:**
- Court appoints a Court Visitor or Guardian Ad Litem; "**Order Appointing Court Visitor or Guardian Ad Litem**" (CC 16:2.121)
- Within 10 judicial days of "**Acknowledgement of Notice of Emergency Nomination - Caseload Capacity Available**" (CC 16:2.129)

Court

- **ORDER APPOINTING PUBLIC GUARDIAN TEMPORARY GUARDIAN &/OR TEMPORARY CONSERVATOR** (CC 16:2.116, CC 16:2.118, or CC 16:2.120)
- Public Guardian appointed **temporary guardian** pursuant (Neb. Rev. Stat. §30-2626(j)).
- Appearance of APG not required.
- Public Guardian Act requirement:
 - Notice must be provided by plaintiff
 - Capacity within OPG for an emergency must be determined by OPG
 - Determination of necessity and whether there is any other alternative to OPG

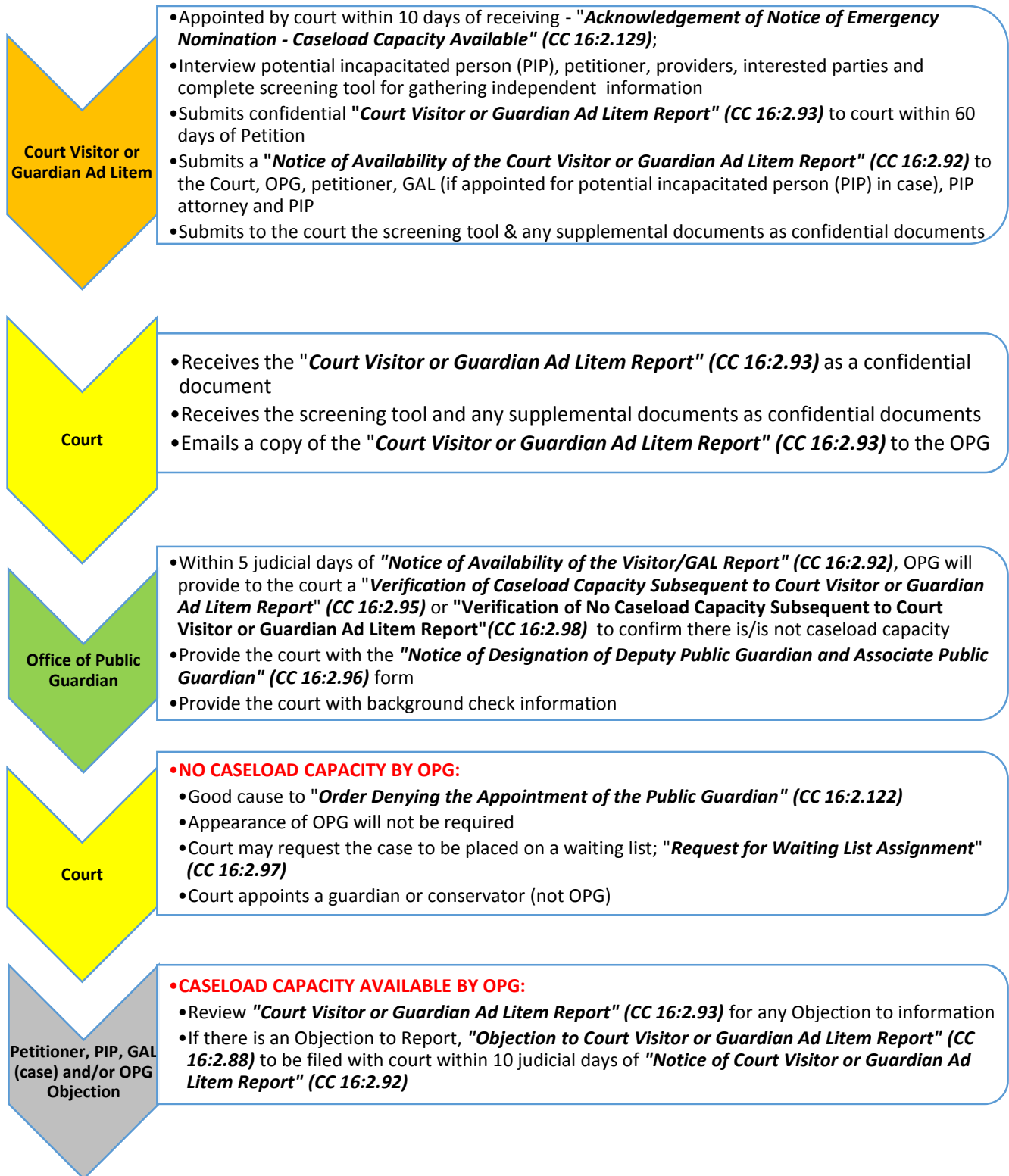
Court

- Office of Public Guardian on a temporary basis if an emergency exists until an evidentiary hearing can be held.
- Temporary Appointment
 - a. Court appoint a visitor/GAL to complete visitor report
 - b. Appointed until evidentiary hearing
 - c. Orders and Letters specify the powers and duties of the temporary guardian (Neb. Rev. Stat. §30-2626(d)).
 - 1. Limited powers and duties to those necessary to address the emergency (Neb. Rev. Stat. §30-2626(a)).
 - 2. Successor has only the powers and duties specified in the previously appointed guardian's letters of guardianship (Neb. Rev. Stat. §30-2626(h)).

Court

- The court shall appoint a visitor and/or guardian ad litem (Neb. Ct. R. Sec. §6-1433.02(G))
- If the Office of Public Guardian is nominated as the **initial or successor guardian** or conservator, the court shall appoint a **visitor and/or guardian ad litem** consistent with Neb. Rev. Stat. §30-2619.01, or a guardian ad litem pursuant to Neb. Rev. Stat. §30-2222(4), to ensure the necessity of the guardianship and/or conservatorship, whether there is an appropriate limitation within the guardianship and/or conservatorship...(Neb. Rev. Stat. §6-1433.02(f)).

Nebraska Public Guardian Emergency Appointment Process



Nebraska Public Guardian Emergency Appointment Process

Office of Public
Guardian

• OPG MAY FILE OBJECTION TO APPOINTMENT IF OTHER OPTIONS

- Review "***Court Visitor or Guardian Ad Litem Report***" (CC 16:2.93) to insure OPG is last resort (no other individual available for guardian/conservator), least restrictive and requested OPG services are necessary
- Within 10 judicial days of "***Notice of Availability of the Court Visitor or Guardian Ad Litem Report***" (CC 16:2.92)
- If OPG determines other options are available file with court "***Objection to the Appointment of the Public Guardian Due to Other Options***" (CC 16:2.94)

Court

• EVIDENTIARY HEARING

- Scheduled between 70-90 days after petition;
- Court to review:
 - If petition is for initial PIP capacity, court will make determination of need for g/c;
 - If petition is for a successor g/c, court shall determine appropriateness of g/c;
- Court to determine whether Public Guardian is appropriate:
 - If OPG has no caseload capacity, good cause exists for the denial of OPG appointment; and the appearance of OPG shall no longer be required.
 - If OPG has no caseload capacity, the court may request for PIP to be placed on waiting list;
 - If OPG has caseload capacity (or OPG has no caseload capacity but court request to be placed on waiting list is pending) and OPG Objects to Appointment due to Other Options Available, court is to determine if other options are available and if good cause exists to deny OPG appointment;
 - If OPG has caseload capacity and OPG does not Object to Appointment (or court determines, despite Objection to the Appointment, that the appointment meets statutory and court rule requirements), the court may appoint the Public Guardian as a guardian or conservator. In addition to the statutory requirements, the order of appointment shall provide:
 - 1) Proper notice has been given to the OPG;
 - 2) The petitioner has acted in good faith and due diligence to identify a guardian or conservator who would serve in the best interest of the alleged incapacitated person;
 - 3) The appointment of the Public Guardian is necessary and does not exceed the caseload limitations as set forth by statute;
 - 4) The visitor or guardian ad litem report has provided supporting evidence that no person is available for appointment as guardian or conservator, all options available to support the individual in the least restrictive manner possible has been explored, and guardianship is a last resort; **and**
 - 5) There is no other alternative than to appoint the Office of Public Guardian.